IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Crl.Rev.Pet.No. 376 of 1999()

ST.1915/1995 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA
(CRL.A. NO.299/97 OF THE SESSIONS COURT, ERNAKULAM)
(CRL.A.2/98 OF THE ADDL.SESSIONS JUDGE, NORTH PARAVOOR)

REVN. PETITIONER:

NOORJI A. RAHAMAN,
PUZHAKARA ILLATH VEEDU,
DOOR NO.XXI/66, KOODAPUZHA,
CHALAKKUDI P.O.

BY ADV. SRI.T.K.AJITH KUMAR
SRI.P.K.SALIN

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. A.V. SHIBU ALIAS, S/O. VARGHESE,
ARRAKKA PARAMBIL VEEDU,
NADUVATTOM, MANJUPARA.

R1 BY PUBLIC PROSECUTOR SRI C.M. KAMMAPPU.

R2 BY ADV. SRI.K.N.NARAYANA PILLAI
SRI.P.VISWAMBHARAN
SRI.DINESH R.SHENOY
SRI.VPK.PANICKER
SRI.S.VIDYASAGAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.1597/1999 IN CRL.R.P. 376/1999

DISMISSED.

23-3-2007 SD/- K.R.UDAYABHANU, JUDGE.

K.R. UDAYABHANU, J.

CRL.R.P.NO.376 of 1999

DATED THIS THE 23rd day of March 2007

ORDER

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months. The evidence adduced in the matter consisted of the testimony of Pws.1 to 3 and Exts.P1 to P9. The findings are concurrent. The case of the revision petitioner is that there was no pre-existing liability so as to attract Section 138 of the Negotiable Instruments Act. Counsel for the revision petitioner has relied on the deposition of PW1 that it is after issuing the cheque, the amount was paid. Even according to the complaint, Section 138 or Section 43 of the Negotiable Instruments Act would not be attracted as the amount was paid before the execution of the cheque. The evidence is that the revision petitioner and her husband approached the complainant and executed the documents, Ext.P1 cheque and Ext.P2 receipt and received the amount of Rs.50,000/- . I find that the contention that the impugned cheque was not issued towards discharge of an existing liability appears to be absurd and perverse. It is seen from the evidence of PW1 that the amount was

paid immediately on executing Ext.P1 impugned cheque and Ext.P2 receipt. I find that the above contention does not deserve serious consideration.

Hence, the revision petition is dismissed. All the same, considering the plea of the counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.50,000/- vide Section 357(3)Cr.P.C. and in default to undergo simple imprisonment for three months. The revision petitioner shall appear before the Judicial First Class Magistrate-II, Aluva on 24-4-2007 to receive sentence. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.